

REEDLEY CITY COUNCIL


- ☒ Consent
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing


ITEM NO: 3

DATE: May 25, 2021

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO SIGN A COMMON USE OF EASEMENT AGREEMENT WITH ALTA IRRIGATION DISTRICT (AID)

SUBMITTED: Rob Terry 
Community Development Director

Marilu Morales 
City Engineer

APPROVED: Nicole R. Zieba 
City Manager

RECOMMENDATION

Approve and authorize the City Manager to sign a Common Use of Easement Agreement with Alta Irrigation District (AID).

BACKGROUND

On October 23, 2001, City Council approved Vesting Tentative Subdivision Map 5013, commonly referred to as River Ridge Estates. Amongst the improvements associated with the building of this map was the creation of multiple outlots along the edges of said map area to accommodate agricultural irrigation. These outlots were deeded to the City through the associated final map process. Easement areas associated with the placement of irrigation improvements/facilities encroached upwards of 20' into adjacent parcels, including parcels now owned by Century Communities, associated with Vesting Tentative Tract Map No. 6229, commonly referred to as Rancho Vista, which was approved by City Council on March 12, 2019. At this time, the developer of Tract 6229 is seeking to move forward with construction submission of a final map for Phase One of their approved map, and in order to do so, needs several additional actions associated with these outlots to take place. First, a Common Use of Easement Agreement established between the City (as the property owner) and AID (as an active user of the easement area for irrigation purposes) needs to be established to further clarify and memorialize scale and uses of the individual outlots. Following such actions, AID

can then quit claim certain portions of the easement not needed for AID water delivery infrastructure, allowing the developer of Tract 6229 to file a final map for Phase One of Tract 6229, and begin full construction activities on-site without being impacted by the unused easement area found along two of the edges of their property. The draft agreement (Attachment 1) has been reviewed by the city attorney, and is found to be acceptable in form and intent to accomplish the needed deliverables. Attachment 2 is a graphic example showing how the Common Use Agreement area interfaces with Tract Map 6229.

Actions associated with the final map for Phase One of the project site, along with the associated draft Subdivision Improvement Agreement, will be brought to Council in June, following appropriate actions by AID to quit claim easement area. Actions associated with entering into the Common Use of Easement Agreement are preparatory for such actions, and is the only action being proposed with this agenda item.

FISCAL IMPACT

There is no fiscal impact to the City with this action, as the agreement does not include any financial obligations.

PRIOR COUNCIL ACTIONS

No prior actions have been taken by Council in regards to this agreement.

ATTACHMENTS

1. Draft Agreement for Common Use of Easement between the City of Reedley and Alta Irrigation District
2. Graphic Map - Common Use Agreement Interface Area with Tract 6229

Motion: _____

Second: _____

1190001357

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

ALTA IRRIGATION DISTRICT
289 NORTH L STREET
DINUBA, CALIFORNIA 93618

2021-0093864

Recorded at the request of:
ERECORDING PARTNERS NETWORK

06/08/2021 01:30 12

Titles: 1 Pages: 11

Fees: \$0.00

CA SB2 Fees: \$0.00

Taxes: \$0.00

Total: \$0.00

--NO FEE--

Benefit of Alta Irrigation District
Pursuant to Government Code § 6103

The undersigned grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX IS \$0

APN: 370-060-42

AGREEMENT FOR COMMON USE OF EASEMENT

THIS AGREEMENT FOR COMMON USE OF EASEMENT (this "Agreement") is made and entered into as of this 26 day of May, 2021 (the "Effective Date"), by and between ALTA IRRIGATION DISTRICT, a California Irrigation District ("District"), and the CITY OF REEDLEY, a California Municipal Corporation ("City"). The District and City are sometimes collectively referred in this Agreement as the "Parties" or singularly as a "Party" or by their individual names.

RECITALS

A. WHEREAS, the District has prior rights and was formed on August 14, 1888, for the purpose of delivering surface water from the Kings River to landowners in the Counties of Fresno, Kings and Tulare; and

B. WHEREAS, the District is a California Irrigation District organized and existing under and by virtue of the Irrigation District Law, Division 11, of the California Water Code; and

C. WHEREAS, the District must have full access to and control over its facilities and the operation thereof; and

D. WHEREAS, the District owns and operates the Buttonwillow Ditch, of which portions have been pipelined along the eastern boundary of Lot 79 and the western boundary of Lot 80 of Producers Colony, as identified in the June 1902 Map of Producers Colony, recorded in Book 2, page 39, of Record of Surveys in the Official Records of Fresno County, and along the southern boundary of Lot 79 and the northern boundary of Lots 77 and 78 of Producers Colony; and

E. WHEREAS, through the Grant Deed recorded on October 20, 1892, in Volume 148 of Deeds, at Page 362, Official Records of Fresno County, The 76 Land and Water

Company granted to the District fee simple title to a portion of Lot 86 of Producers Colony and the eastern 20 feet and southern 20 feet of Lot 79 of Producers Colony; and

F. WHEREAS, pursuant to that certain Agreement Granting Easement for Pipeline dated June 15, 2004, and recorded as Document Number 2004-0154098 in the Official Records of Fresno County, the District acquired a perpetual easement and right-of-way for a pipeline, which replaces a portion of the Buttonwillow Ditch ("District Outlot B Easement"); and

G. WHEREAS, the City holds fee title to that certain real property commonly referred to as Outlot "B" of the Final Map of Tract No. 5178, River Ridge Unit II, which is located on Producers Colony as Lot 80, and recorded on July 15, 2004, as Document Number 2004-0154102 in the Official Records of Fresno County, California ("Outlot B"); and

H. WHEREAS, the City holds fee title to that certain real property commonly referred to as Outlot "C" of the Final Map of Tract No. 5410, River Ridge Unit III, recorded on April 8, 2005, as Document Number 2005-0078048 in the Official Records of Fresno County, California ("Outlot C"); and

I. WHEREAS, the Final Map of Tract No. 5410 also notes (on final map sheet three) that the District possesses an exclusive easement, the boundaries of which are coterminous with those of Outlot "C," by virtue of a document recorded March 27, 1906 in Book 355 of Deeds, Page 219, Official Records of Fresno County ("District Outlot C Easement"); and

J. WHEREAS, within the District Outlot B Easement and the District Outlot C Easement (collectively referred to herein as the "District Easement Area"), the District currently owns and operates an existing pipeline and associated appurtenances and facilities for the conveyance of water ("District Facilities"); and

K. WHEREAS, the District Facilities and/or the District Easement Area overlap Outlot B and Outlot C, and the Parties desire to designate the entirety of Outlot B and the entirety of Outlot C as the "Area of Common Use", and as further depicted in the attached Exhibit "A"; and

L. WHEREAS, the District and City both desire to establish certain conditions under which the Area of Common Use shall be used by the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the Parties hereby agree as follows:

1. **City's Consent.** City hereby consents to the use by District of the Area of Common Use for the operation, maintenance, repair, and replacement of District Facilities, including, but not limited to, ingress and egress to Outlot B and Outlot C. The District's use of the Area of Common Use shall be subject to City's right to fully use the Area of Common Use for all of City's purposes, and to the terms and conditions herein contained. The District acknowledges that by City's consent to District's use of the Area of Common Use, City is

making no representation or warranty regarding the existence or non-existence of any third parties claiming a right, title, or interest in the Area of Common Use.

2. **District Facilities.** District shall, at its own cost and expense, locate, construct, operate, maintain, repair, and replace the District Facilities in the Area of Common Use in such a manner and using such material as may be required so that the such activities will not at any time damage, impair, or interfere with the current use by City of Outlot B and Outlot C. The City shall coordinate any construction or maintenance of Outlot B and Outlot C so that it does not interfere with the District Easement Area or the District's water delivery, operations, and maintenance schedules.

3. **Common Use.** Except as expressly set forth herein, this Agreement shall not in any way alter, modify, or terminate the District Easement Area in the Area of Common Use. Both District and City shall use the Area of Common Use in such a manner as not to unreasonably interfere with the rights of one another and nothing herein shall be construed as a release or waiver of any claim for compensation or damages that District or City may now have, or may hereafter acquire, resulting from the construction or alteration of existing facilities or the construction or alteration of additional facilities by either District or City, which causes damage to or unreasonably interferes with the use of the Area of Common Use by the other Party. Each Party shall construct, operate, or maintain their improvements in the Area of Common Use in a manner that does not diminish or restrict the ability of the other Party to use the Area of Common Use for the purpose identified in this Agreement. Neither Party shall have the right to increase the extent or scope of their use of the Area of Common Use as identified in this Agreement, without the express written authorization of the other Party.

4. **Responsibilities of the Parties.**

(a) Except as described above, the District and City shall be responsible for the maintenance, repair, alteration, improvement, or relocation of their respective facilities within the Area of Common Use.

(b) Nothing in this Agreement shall relieve the Parties of any responsibility toward the other for damage to the other's property located outside of the Area of Common use.

5. **Indemnification.**

(a) District shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by City, District or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the District's use of the Area of Common Use, except for the intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents, and volunteers in performance of this Agreement; provided nothing herein shall constitute a waiver

by District of governmental immunities including California Government Code sections 810 et seq.

(b) City shall indemnify, hold harmless and defend District and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by District, City or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the use of the Area of Common Use, except for the intentional acts or omissions, or willful misconduct of District or any of its officers, officials, employees, agents, and volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code sections 810 et seq.

6. **Insurance.** It is understood and agreed that the District and City will maintain insurance policies or self-insurance programs to fund their respective liabilities. The Parties agree that such respective programs or policy coverage for Worker's Compensation shall contain a waiver of subrogation as to the other Party and each of its officers, officials, agents, employees or volunteers. Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required of either Party under this Agreement.

7. **Notice of Work.** Except in the event of an emergency, or as necessary to maintain the flow of water in District's Facilities, each Party shall give the other reasonable notice before performing or permitting any work affecting the other's facilities in the Area of Common Use, and shall furnish the other Party with plans and specifications describing the work to be done before commencement of the work. The reviewing Party shall have the right to specify reasonable conditions on, or changes in, the proposed work and schedule when necessary to prevent damage to its facilities or interference with its operations in the Area of Common Use.

Neither Party shall permit installation of facilities by others in the Area of Common Use without the written consent of the other Party. Each Party agrees to repair any damage to the other Party's facilities caused by work directed or performed by it within the Area of Common Use. Except that, where City's facilities within the Area of Common Use must necessarily be damaged, destroyed or removed by the District to accommodate repair, maintenance, modification or replacement of District's facilities, the District shall have no obligation to restore City's affected facilities. In the event of an emergency, no such notice shall be required and either Party may proceed to do what is reasonably necessary to prevent serious loss or damage and to protect the public health and safety. An emergency shall be deemed to exist if immediate action is reasonably required to prevent serious loss or damage to life or property, or to protect the public health and safety.

8. **Further Assurances.** From time to time and at any time after the execution and delivery of this Agreement, each of the Parties, at its own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other Party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other Party, to evidence or carry out the intent of this Agreement.

9. **Term.** The term of this Agreement shall be in perpetuity.

10. **Termination.** Violation of any term of this Agreement shall be cause for termination of the Agreement, and in such an event, each Party shall have all remedies available at law or equity to enforce that Party's right to unimpeded use of the Area of Common Use.

11. **Notices.** All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile or electronic transmission, and shall be deemed sufficiently given if served in a manner specified in this Section 11. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices.

To District: Alta Irrigation District
c/o General Manager
289 North L Street
Dinuba, California 93618
Telephone: (559) 591-0800 Email:
cw@altaid.org

With Copy To: Lauren D. Layne, Esq.
Baker Manock & Jensen, PC 5260
N. Palm Avenue, Suite 421 Fresno,
California 93704 Telephone: (559)
432-5400 Facsimile (559) 432-5620
Email: llayne@bakermanock.com

To City: City of Reedley
Nicole Zieba, City Manager
1733 9th Street
Reedley, California 93654
Telephone: (559) 637-4200
Facsimile: (559) 637-2139
Email: nicole.zieba@reedley.ca.gov

Either Party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this section and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery to the Postal Service or courier.

Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

12. **Relationship of Parties.** Neither Party hereto is, nor shall it become or be deemed to be, a partner or a joint venture with the other by reason of the provisions of this Agreement, nor shall this Agreement be construed to authorize either Party to act as the agent for the other. Nothing contained in this Agreement shall be deemed to create any contractual relationship between the Parties hereto with any third parties.

13. **Entire Agreement.** This Agreement and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

14. **Amendments.** No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized and signed by representatives of both Parties.

15. **Successors.** The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, and administrators of the respective Parties.

16. **Assignment.** Neither Party hereto shall assign this Agreement, or any interest herein, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any such attempted assignment in violation of this Agreement shall be null and void.

17. **Governing Law; Venue.** This Agreement and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California. Venue for the purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be in Fresno County, California.

18. **Attorney's Fees.** Should any action or proceeding be commenced between the Parties hereto concerning this Agreement, or the rights and duties of any Party in relation thereto, the Party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing Party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

19. **Severability.** If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

20. **Headings.** The subject headings of the sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein.

21. **Binding Effect.** This Agreement shall "run with the land" and be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

22. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

"CITY"

CITY OF REEDLEY,
a California municipal corporation

By: [Signature]

Name: Nick Zieba

Title: City Manager

ACKNOWLEDGED

By: [Signature]

Name: Ruthie Greenwood

Title: City Clerk

"DISTRICT"

ALTA IRRIGATION DISTRICT,
a California irrigation district

By: [Signature]

Name: Jack Brandt

Title: DIRECTOR

ACKNOWLEDGED

By: [Signature]

Name: Chad B. Wesley

Title: General Manager
Secretary

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Tulare

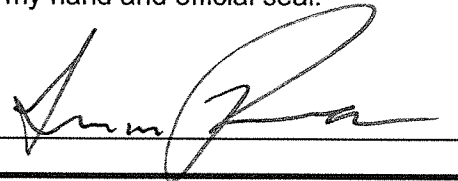
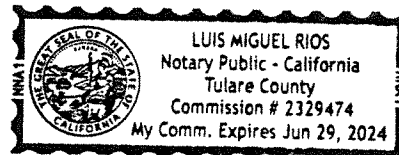
On June 7, 2021 before me, Luis Miguel Rios, Notary Public
(insert name and title of the officer)

personally appeared Jack Brandt and Chad B. Wegley,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in
~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Fresno

)

On 5/26/2021, 2021, before me, Ruthie Greenwood, a Notary Public, personally appeared Nicole R. Zieba, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Ruthie

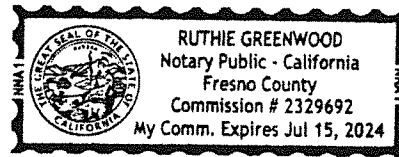
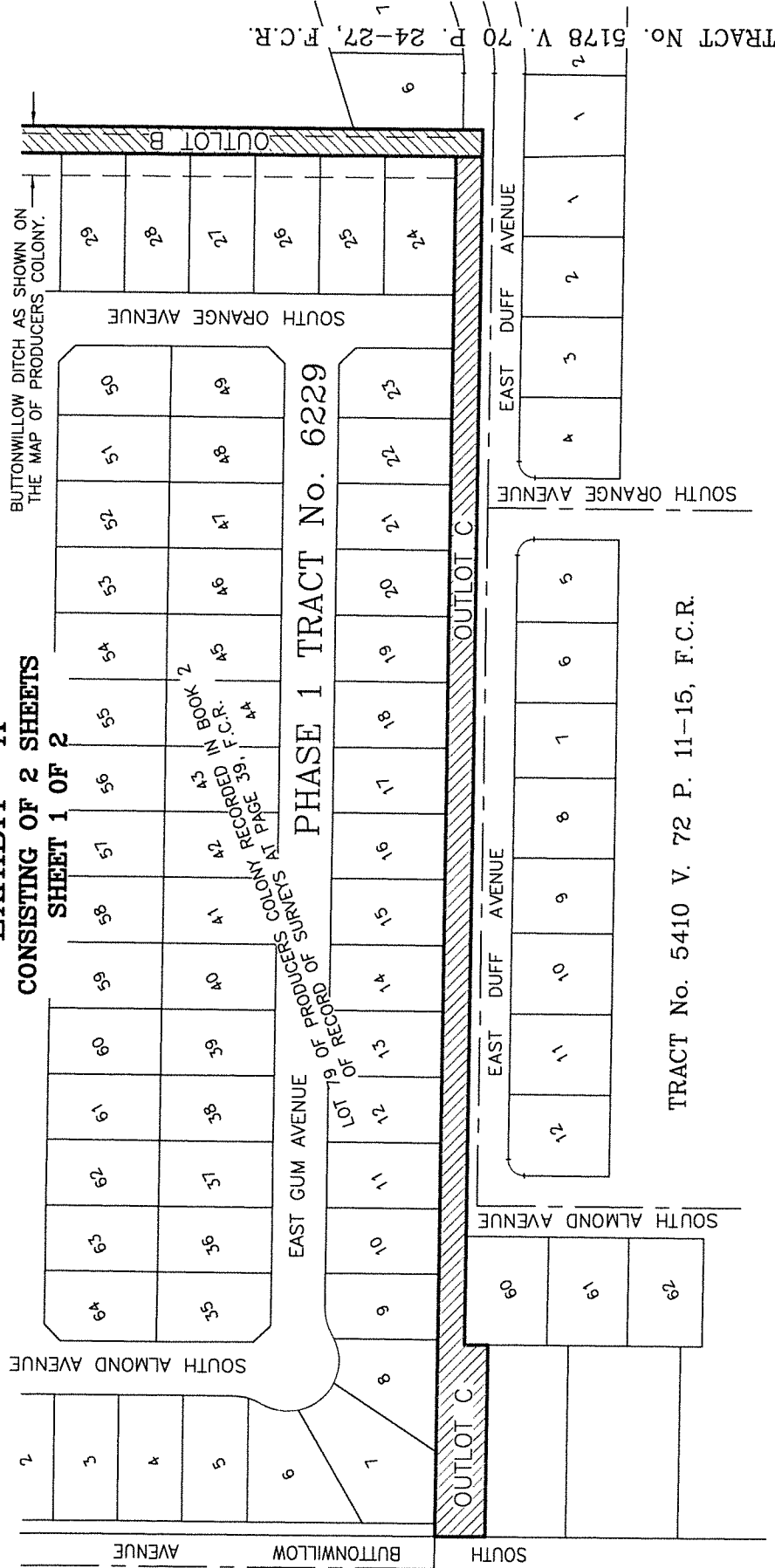


EXHIBIT "A"

CONSISTING OF 2 SHEETS
SHEET 1 OF 2



LEGEND

OUTLOT B PREVIOUSLY DEDICATED TO THE CITY OF REEDLEY FOR PUBLIC USE PER TRACT NO. 5178, RECORDED IN VOLUME 70 OF PLATS, AT PAGES 24 THROUGH 27, F.C.R.

OUTLOT C PREVIOUSLY DEDICATED TO THE CITY OF REEDLEY FOR PUBLIC USE PER TRACT NO. 5026, RECORDED IN VOLUME 65 OF PLATS, AT PAGES 58 THROUGH 60, F.C.R.

--- BUTTOWILLLOW DITCH

F.C.R. FRESNO COUNTY RECORDS

TRACT No. 5410 V. 72 P. 11-15, F.C.R.



DATE: 5-28-2021 SCALE: 1"=100' DRAWN BY: JDB NO. 18-018	REVISIONS: --	DRAWING NO. 1 OF 2 SHEETS
PREPARED BY: DIXON & ASSOCIATES, INC. LAND SURVEYING 620 DEWITT, #101 CLOVIS, CALIFORNIA, 93612 PH: (559)297-4200 FAX: (559)297-4272		

TRACT No. 5178 V. 70 P. 24-27, F.C.R.

EXHIBIT "A"

CONSISTING OF 2 SHEETS

SHEET 2 OF 2

LOT 86 OF PRODUCERS COLONY RECORDED IN BOOK 2 OF
RECORD OF SURVEYS AT PAGE 39, F.C.R.

LOT 85 OF PRODUCERS COLONY RECORDED IN BOOK 2
OF RECORD OF SURVEYS AT PAGE 39, F.C.R.

EAST EVENING GLOW AVENUE

PHASE 1 TRACT No. 6229

EAST EARLY AVENUE

EAST GUM AVENUE

ORANGE AVENUE

ORANGE AVENUE

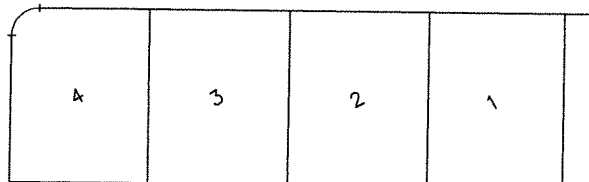
SOUTH ORANGE AVENUE

OUTLOT B

OUTLOT C

EAST DUFF AVENUE

SOUTH ORANGE AVENUE



TRACT No. 5410 V. 72 P. 11-15, F.C.R.

LEGEND



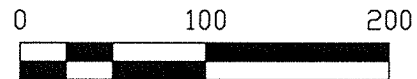
OUTLOT B PREVIOUSLY DEDICATED TO THE
CITY OF REEDLEY FOR PUBLIC USE PER
TRACT NO. 5178, RECORDED IN VOLUME 70
OF PLATS, AT PAGES 24 THROUGH 27, F.C.R.



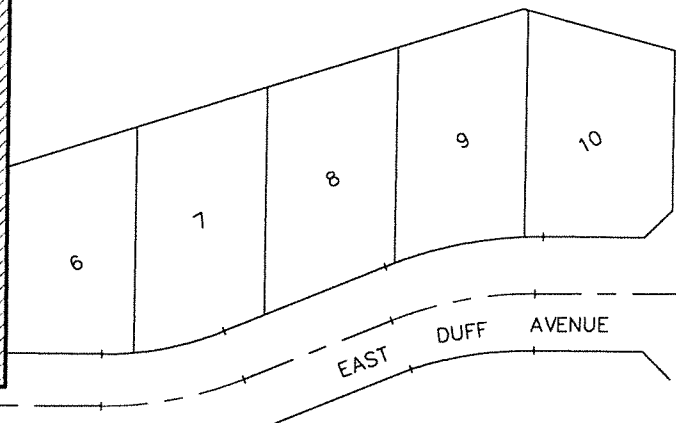
OUTLOT C PREVIOUSLY DEDICATED TO THE
CITY OF REEDLEY FOR PUBLIC USE PER
TRACT NO. 5026, RECORDED IN VOLUME 65
OF PLATS, AT PAGES 58 THROUGH 60, F.C.R.

— — — — — BUTTONWILLOW DITCH

F.C.R. FRESNO COUNTY RECORDS

BUTTONWILLOW DITCH AS SHOWN ON
THE MAP OF PRODUCERS COLONY.

TRACT No. 5178 V. 70 P. 24-27, F.C.R.



PREPARED BY:

DIXON & ASSOCIATES, INC.
LAND SURVEYING

620 DEWITT, #101
CLOVIS, CALIFORNIA, 93612

PH: (559)297-4200 FAX: (559)297-4272

DATE: May 28, 2021
SCALE: 1" = 100'
DWN BY: DB
WO: 18-016

REVISIONS:

DRAWING NO.

2

OF 2 SHEETS